IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 654 of 1994

in

SPECIAL CIVIL APPLICATIONNo 1832 of 1993
with
Civil Application No. 2767 of 1994

For Approval and Signature:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT MARITIME BOARD
Versus
KANJI NATHA KARMATA

Appearance:
1. LETTERS PATENT APPEAL No. 654 of 1994
MS SEJAL K MANDAVIA for Appellant No.
NOTICE SERVED for Appellant No.
MS SADHANA SAGAR for Respondent No. 1

CORAM : HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 29/01/2004

ORAL JUDGEMENT

(Per : HON'BLE THE CHIEF JUSTICE)

Through this Letters Patent Appeal, order of the learned Single Judge dated 1.7.1994 passed in Special Civil Application NO. 1832 of 1993 has been challenged. Kanji Natha Karmata (Petitioner) applied for appointment on compassionate ground, his father having died while in service on 31.10.1970. At that time, the petitioner was two months old. Mother of the petitioner applied in 1988 to the Port Officer, Gujarat Maritime Board, Veraval. Thereafter, she applied again in April, 1989 followed by another attempt dated 25.3.1988. Ultimately, the petitioner got communication that his request cannot be accepted, having applied after prescribed time limit. The petitioner filed Special Civil Application No. 1832 of 1993 seeking direction against the respondents to appoint him on compassionate ground. By the impugned judgment, the learned Single Judge allowed the petition and directed the respondents to appoint the petitioner on compassionate ground against the first available vacancy under their control anywhere in the State of Gujarat. Appellant is aggrieved by this order, therefore, challenged through this appeal.

Ms. S.K. Mandavia submits that the petitioner could not be appointed on compassionate ground for many reasons namely he applied after many years; family having survived for these years; necessity of seeking compassionate appointment not surviving; rules for compassionate appointment were not in force in 1970 and the father of the petitioner being casual worker having worked for three and half years alone, petitioner is not entitled to seek such appointment on compassionate ground. In support of her submissions, learned advocate Ms. Mandavia made a reference to the apex court decision in UMESH KUMAR NAGPAL VERSUS STATE OF HARYANA AND OTHERS [(1994) 4 Supreme Court Cases 138] and STATE OF UP AND OTHERS VERSUS PARAS NATH [(1998) 2 Supreme Court Cases 412].

The matter is examined. The papers have been perused, more particularly, the reasons recorded by the learned Single Judge in the impugned judgment. The petitioner was two months old at the time when his father died. Obviously, he could not apply for compassionate

appointment at that stage. His mother applied in 1988 by which time he may be 18 years old, eligible for appointment on compassionate ground, followed by another communication of appointment in 1989 and 1991 when the respondents did not decide the application.

The contention that the family survived for all these years cannot be accepted. The survival of the family of a person whose eldest child was two months old at the time of death can be imagined in the context of death of sole bread earner of the family. It is not simple survival. It has to be the survival in its real sense. Passing of days, months and years is not survival as such. What else family could do when the eldest child in the family was only two months old? As soon as it attained the age of 18 years, mother took initiative to seek appointment on compassionate ground. Therefore, it cannot be said that as the family survived during all these years, therefore, did not require appointment on compassionate ground. [BALBIR KAUR AND ANR. VERSUS SAIL & ORS., 2000 (4) SCALE 670]. Therefore, such contention is rejected.

Another facet of the question is whether the petitioner applied late. As stated above, mother of the petitioner applied immediately after the petitioner attained the age of 18 years and followed it by two other communications of April, 1989 and March, 1991. In view of these facts, the respondents cannot say that the application was belated. The contention that when the father of the petitioner died, a scheme for appointment on compassionate ground was not existing cannot be accepted for the reason that there is no evidence/suggestion to demonstrate that some other scheme/guidelines did not exist for appointment on compassionate ground. Further, it is not of much significance because the petitioner become entitled to seek such appointment on compassionate ground in and around 1988 and the Rules for compassionate appointment had come into force in 1979. Consequently, the petitioner could apply and he could be given benefit of compassionate appointment. Last submission that the father of the petitioner was a casual worker, having worked only for three and half years cannot be examined since it has not been raised before the learned Single Judge. Ms. Mandavia submits that it was raised by the appellant in the affidavit in reply before the learned Single Judge, cannot be accepted, since it is not mentioned in the judgment. Therefore, it has been raised for the first time. Further, there is no prohibition in the scheme. So, contention is rejected. Therefore,

there is no merit in the appeal and same is, therefore, rejected with no order as to costs.

In view of these orders on the appeal, Civil Application No. 2767 of 1994 is also disposed of with no order as to costs.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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